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EXPEDITED PROCEDURE

REMARKS / DISCUSSION OF ISSUES

Claims 1 – 19 are pending in the application. Claims 1, 7, 11 and 17 are independent.

In the present response, the claims are not amended.

35 U.S.C. 102

The Office action rejects claims 1 – 4, 7, 9 and 10 under 35 U.S.C. 102(b) over Heemskerk, U.S. Patent 6,031,815.

Applicants submit that for at least the following reasons, claims 1 – 4, 7, 9 and 10 are patentable over Heemskerk.

For example, claim 1, in part, requires:

"the control logic data comprising executable code or instructions."

In the Office Action, page 6, the Office conceded that Heemskerk does not teach the specific limitation of the control logic data comprising executable code or instructions, as claimed. However, the Office alleged that the difference(s) are only found in the non-functional descriptive material and are not functionally involved in the steps recited nor do they alter the recited structural elements. Applicant respectfully disagrees with such allegation.

Applicant submits that the claimed control logic data comprising executable code or instructions is functional. According to MPEP 2106.01, "functional descriptive material" consists of data structures and computer programs which impart functionality when employed as a computer component. The control logic data is functional structurally and functionally interrelated to the medium. This is because the control logic data is linked to the storage medium; the control logic data in the storage medium is readable by the read means; and the control means, coupled to the read means, executes the code or instructions in the control logic data to control the processing means. Clearly, the claimed invention defines structural and functional interrelationships between the control logic data and the software and hardware components (read means, control means and processing means) which

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permit the control logic data's functionality to be realized.   Therefore, the differences between Heemskerk and the claimed invention are not merely found in the non-functional descriptive material

Furthermore, Heemskerk teaches that the system controller uses the data from the address information as input for positioning the read/write head. The program code or instructions that control the positioning is already in the system controller. In Heemskerk, the system controller does not need to have a step for reading and executing any code or instructions from a medium. In contrast, the claimed invention requires the control means to execute code or instruction read from a medium. Therefore, the control logic data is functionally involved in the steps recited and the functionalities involved are different from that of Heemskerk. Therefore, Heemskerk fails to disclose the claimed feature: the control logic data comprising executable code or instructions.

In view of at least the foregoing, Applicant submits that claim 1 is patentable over Heemskerk.

Similarly, independent claim 7, in part, requires:

"*the control logic data comprising executable code or instructions.*"

Applicant essentially repeats the above arguments for claim 1 and applies them to claim 7 pointing out why Heemskerk fails to disclose the above claimed feature. Therefore, claim 7 is patentable over Heemskerk. Claims 2 – 4, 9 and 10 are also patentable because they at least respectively depend from claims 1 and 7 with each claim containing further distinguishing features. Applicant essentially repeats the above argument from claim 1 for each of the dependent claims.

Withdrawal of the rejection of claims 1 – 4, 7, 9 and 10 under 35 U.S.C. 102(b) is respectfully requested.

35 U.S.C. 103

Under 35 U.S.C. 103(a) the Office Action rejects claims 5, 6 and 8 over Heemskerk in view of Nerlikar, U.S. Patent 5,905,798; claims 11 – 14, 17 and 19 over Heemskerk in view of O'Connor, U.S. Patent 5,745,568; claims 15 and 16 over

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Heemskerk in view of O'Connor and further in view of Nerlikar; and claim 18 over Heemskerk in view of O'Connor and further in view of Tavor, U.S. Patent 6,070,154.

Applicant submits that none of the cited secondary references can cure the defect present in Heemskerk as discussed above for claim 1.

Independent claims 11 and 17 are patentable for at least the reason that each of them also requires, in part, the similar claimed feature:

"the control logic data comprising executable code or instructions,"

as in claim 1 discussed above. Claims 5, 6, 8, 12 – 16, 18 and 19 are patentable because at least they respectively depend from claims 1, 7, 11 and 17, with each claim containing further distinguishing features.

Withdrawal of the rejection of claims 5, 6, 8 and 11 – 19 under 35 U.S.C. 103(a) is respectfully requested.

Conclusion

In view of the foregoing, Applicant respectfully requests that the Examiner withdraw the objection(s) and/or rejection(s) of record, allow all the pending claims, and find the application in condition for allowance. If any points remain in issue that may best be resolved through a personal or telephonic interview, the Examiner is respectfully requested to contact the undersigned at the telephone number listed below.

Respectfully submitted,

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